

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 9759	DATE	7/15/2002
CASE TITLE	Veronica Kirk et al. Vs. American Horizon Ins Co.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## Memorandum Opinion and Order

## DOCKET ENTRY:

- (1)  Filed motion of [ use listing in "Motion" box above.]
- (2)  Brief in support of motion due \_\_\_\_\_.
- (3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  General Rule 21  FRCP41(a)(1)  FRCP41(a)(2).
- (10)  [Other docket entry] Enter Memorandum Opinion and Order. Accordingly, we must vacate the judgment and dismiss the complaint without prejudice.

(11)  [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.	<p>U.S. DISTRICT COURT CLERK</p> <p>02 JUL 15 PM 3:12</p> <p>ED 10</p> <p>Debtors received in central Clerk's Office</p>	<p>number of notices</p> <p>JUL 16 2002</p> <p>date docketed</p> <p>AKR</p> <p>docketing deputy initials</p> <p>date mailed notice</p> <p>24</p> <p>mailing deputy initials</p>
	No notices required.		
	Notices mailed by judge's staff.		
	Notified counsel by telephone.		
✓	Docketing to mail notices.		
✓	Mail AO 450 form.		
	Copy to judge/magistrate judge.		
WAH	courtroom deputy's initials		

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

VERONICA KIRK, LARRY KIRK, )  
BRIAUN KIRK and CARLA FOSTER, )  
Plaintiffs, )  
vs. ) No. 01 C 9759  
AMERICAN HORIZON INSURANCE )  
COMPANY, )  
Defendant. )

DOCKETED  
JUL 16 2002

MEMORANDUM OPINION AND ORDER

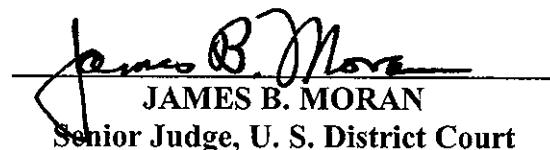
This case does not reflect well on anyone (except perhaps the plaintiffs themselves), including the court. The insurance carrier's processing of the claims was lamentable; plaintiffs' counsel brought suit in the wrong court; the insurance carrier's counsel failed to defend; and this court, overlooking obvious jurisdictional infirmities, granted a default judgment. That has resulted in yet more legal effort, which takes the parties back to square one. These claims should have been resolved two years ago by the parties, and we have urged them to do so now, apparently to no avail. Unfortunately, we cannot bring this matter to end because we lack subject matter jurisdiction and thus we have no authority to do anything other than dismiss the complaint without prejudice.

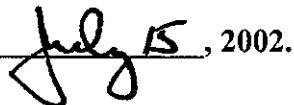
We assume that Veronica and Larry Kirk are citizens of Wisconsin, although the allegation is that they reside there. We assume Carla Foster is a citizen of Illinois, although the allegation is that she resides there. The citizenship of the defendant is unclear. A corporation is a citizen of the state of incorporation, which is not alleged, and of the state in which it has its principal place of business, which is also not alleged. Plaintiffs do allege that

24

defendant is licensed to do business in both Illinois and Wisconsin, but that does not establish citizenship, although it means venue is proper in either state. For all we know, defendant could be incorporated and have its principal place of business other than in Illinois and Wisconsin. Thus there could be diversity, but it does not appear, as it must, from the face of the complaint.

If that were the only defect, we would vacate the default judgment and dismiss with leave to amend if complete diversity could be alleged. But, as we earlier noted, each of the plaintiffs had only soft tissue injuries of limited duration. For diversity jurisdiction each plaintiff's claim must exceed the \$75,000 jurisdictional amount. Each plaintiff so claims, but that does not establish jurisdiction if it is clear that no reasonable trier of fact could award damages exceeding that amount to a plaintiff seeking recovery. As the amounts previously awarded indicate, none of the claims could reach that amount. Accordingly, we must vacate the judgment and dismiss the complaint without prejudice. We do so reluctantly because these claims should have been processed and paid a long time ago. This lawsuit would, if nothing else, appear to provide the defendant with all the information necessary to do just that, and we urge the parties cooperatively to resolve the matter without further litigation.

  
\_\_\_\_\_  
JAMES B. MORAN  
Senior Judge, U. S. District Court

  
\_\_\_\_\_  
July 15, 2002.

United States District Court  
Northern District of Illinois  
Eastern Division

Veronica Kirk et al.

v.

American Horizon Insurance Co.

**JUDGMENT IN A CIVIL CASE**

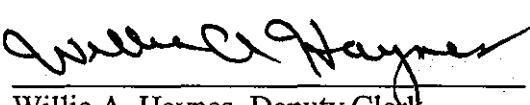
Case Number: 01 C 9759

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.
- Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that accordingly, we must vacate the judgment and dismiss the complaint without prejudice.

Michael W. Dobbins, Clerk of Court

Date: 7/15/2002

  
Willie A. Haynes, Deputy Clerk